

Deposition of Stephen Russo

Royal Sleep Products, Inc. vs. Restonic Corporation

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF ILLINOIS
 3 EASTERN DIVISION

ORIGINAL

4 ROYAL SLEEP)
 5 PRODUCTS, INC., a)
 6 Florida Corporation,)

7 Plaintiff,)

8 vs.)

No. 07 C 6588

9 RESTONE CORPORATION,)
 10 an Illinois)
 11 Corporation, et al.,)

12 Defendants.)

13 The deposition of STEPHEN RUSSO, called
 14 by the Plaintiff for examination, pursuant to
 15 notice and pursuant to the Federal Rules of
 16 Civil Procedure for the United States
 17 District Courts pertaining to the taking of
 18 depositions, taken before Laura E. Locascio,
 19 Certified Shorthand Reporter and Notary
 20 Public in and for the County of Cook, State
 21 of Illinois, at 330 North Wabash Avenue,
 22 Chicago, Illinois commencing at 1:40 p.m. on
 23 the 14th day of July, A.D., 2008.
 24



1 APPEARANCES:

2
3 ZARCO EINHORN SALKOWSKI & BRITO

4 BY: MR. ROBERT F. SALKOWSKI

5 Bank of America Tower

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7 27th Floor

8 Miami, Florida 33131

9 Phone: 305-374-5418

10 On behalf of the Plaintiff;

11
12 BURKE, WARREN, MCKAY & SERRITELLA, PC

13 BY: MR. FREDERIC A. MENDELSON

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15 330 North Wabash Avenue

16 Suite 2200

17 Chicago, Illinois 60611

18 Phone: 312-840-7004

19 On behalf of the Defendants,

20 Restonic Corporation and

21 Restonic Mattress Corporation;

1 APPEARANCES: (CONT'D)

2
3 SMITH AMUNDSEN, LLC

4 BY: MR. THOMAS J. LYMAN, III
5 150 North Michigan Avenue
6 Suite 3300
7 Chicago, Illinois 60601
8 Phone: 312-894-3241

9 On behalf of the Defendants,
10 Sleep Alliance, LLC; Royal
11 Bedding Company of Buffalo,
12 Jackson Mattress Co, LLC; and
13 Tom Comer;

14
15 PEARSON CHRISTENSEN & CLAPP

16 BY: MR. DANIEL L. GAUSTAD
17 645 Hill Avenue
18 Grafton, North Dakota 58237
19 Phone: 701-352-3262

20 Appearing telephonically on
21 behalf of the Defendants,
22 Stevens Mattress Manufacturing
23 Co. and Richards Stevens;
24

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1 APPEARANCES: (CONT'D)

2

3

4 FULBRIGHT & JAWORSKI, LLP

5 BY: MR. ANDREW FRIEDBERG

6 1301 McKinney Street

7 Houston, Texas 77010

8 Phone: 713-651-5151

9 Appearing telephonically on

10 behalf of the Defendants,

11 Continental Silverline

12 Products, L.P. and Drew Robins.

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14 (No exhibits were marked.)

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1 would give the various licensees under the
2 license agreements?

3 A As the president of Restonic?

4 Q Yes.

5 A No.

6 Q Have you done any type of -- have you
7 performed any type of support on behalf of
8 Sleep Alliance outside your role as president
9 of Restonic?

10 A I facilitated a meeting for Sleep
11 Alliance.

12 Q What was the nature of that meeting, sir?

13 A It was a business planning meeting they
14 had.

15 Q Do you know when that was?

16 A Not exactly. It was last year.

17 Q Do you recall if it was in October of
18 2007 at the Sofitel Hotel?

19 A That sounds familiar.

20 Q What was the reason why -- first of all,
21 who asked you to facilitate the meeting for
22 Sleep Alliance?

23 A Mr. Comer did.

24 Q This was at the Sofitel Hotel here in

1 typically pay Apollo Solutions for the
2 facilitation of these meetings?

3 A If there are -- if they become ongoing
4 engagements.

5 Q Is the work Apollo Solutions performs on
6 behalf of its customers limited to facilitating
7 meetings in the bedding industry, or is it any
8 type of industry?

9 A Any type of industry.

10 Q With respect to the meeting that occurred
11 in the Sofitel Hotel in Chicago last year, do
12 you recall who was in attendance at that
13 meeting?

14 A I recall some of the participants, but I
15 may not recall all of the participants.

16 Q Who do you recall?

17 A Mr. Comer was present. Ms. Laurie
18 Tokarz. Mr. Robins was present. A fellow by
19 the name of Ken Akers. A fellow by the name of
20 Brent Ford.

21 And there were two representatives
22 of a firm that they were working with,
23 Mann Epperson. But I don't recall their first
24 names, though.

1 Q Do you know how long that Sleep Alliance
2 meeting that was held in October of '07 lasted?
3 Was it a day? Was it two days?

4 A I think it was a day approximately.

5 Q Do you know why the Sleep Alliance
6 elected to hold its meeting here in Chicago, as
7 opposed to elsewhere?

8 A In working on the planning of the
9 meeting, I think it was the -- there would be a
10 central location for all parties to be able to
11 come to.

12 Q Other than the meeting that occurred in
13 October of '07 here in Chicago, are you aware
14 of any other meeting in which Sleep Alliance
15 conducted here in Illinois?

16 A No.

17 Q Now, sir, I want to talk briefly just for
18 background information about the manner in
19 which Restonic Corporation and Restonic
20 Mattress Corporation is structured. You have
21 shareholders, correct?

22 A Yes, we do.

23 Q Currently do you know who those
24 shareholders are?

1 A I know in general the shareholders, but I
2 don't know specifically.

3 Q I just want to run down some names here
4 that are relevant to this action. And let's
5 see if you know they're a shareholder or not.
6 Mr. Comer?

7 A I believe Mr. Comer's companies, I
8 believe, are shareholders.

9 Q That includes Royal Bedding or Jackson
10 Mattress. Do you believe either one of those
11 may be shareholders?

12 A I've seen those names on shareholder
13 records.

14 Q How about Richard Stevens, do you know if
15 he is a shareholder, either he or Stevens
16 Mattress?

17 A I believe they are, yes.

18 Q Drew Robins or Continental Silverline, do
19 you know if they are shareholders?

20 A I believe, yes.

21 Q Gary Robinson or his company, do you
22 know?

23 A I believe so, yes.

24 Q The Sleep Alliance, do you know whether

1 or not they are share -- or it is a shareholder
2 of Restonic?

3 A I believe it to be so. But I don't
4 recall personally having seen those records
5 yet.

6 Q In addition to the shareholders, Restonic
7 also has a board of directors, correct?

8 A Restonic Corporation has a board of
9 directors. And Restonic Mattress Corporation
10 have a board of directors. There are two
11 separate boards of directors.

12 Q Are any of the people who are the
13 directors for Restonic Corporation also
14 directors for Restonic Mattress Corporation?

15 A Today, yes. In the past, no.

16 Q What director who sits on the board of
17 directors for Restonic Corporation is also a
18 director for Restonic Mattress Corporation?

19 A Tom Comer.

20 Q How long has Mr. Comer sat as a director
21 on both of these boards?

22 A From the point in which the Restonic
23 Corporation board was elected at the end of
24 last year. So it would be -- I think the

1 meeting was December 29th or 30th of last year.

2 Q December 29th or 30th of '07?

3 A Correct.

4 Q Prior to December of '07, did Mr. Comer
5 also sit on one of the boards?

6 A He was on the Restonic Mattress
7 Corporation board from December of '06.

8 Q Who nominated Mr. Comer, if you know, to
9 the boards for both of these corporations?

10 A I don't know.

11 Q Now, to your knowledge, are there board
12 of director meetings for Restonic Corporation
13 and for Restonic Mattress Corporation?

14 A On occasion there are meetings.

15 Q Sir, are you a board member for either of
16 those two corporations?

17 A I'm a board member for Restonic Mattress
18 Corporation.

19 Q And besides yourself and Mr. Comer, who
20 else is a board of director for Restonic
21 Mattress Corporation?

22 A Daniel Cantor. Lee Quinn.

23 Darryl Butler.

24 Q Does either Mr. Cantor, Mr. Quinn or

1 other board of directors meetings conducted by
2 RMC either in person or by telephone?

3 A Yes.

4 Q Was that in person or by telephone?

5 A By telephone.

6 Q Do you know how many times -- let me get
7 into that, sir.

8 Do you know how many times a year
9 the board of directors meet for both of those
10 companies?

11 A There's not a set schedule.

12 Q Within the year and a half or so that
13 you've been a president, has the board for
14 those two companies met on pretty much the same
15 type of schedule, same number of times per
16 year? Or has that changed?

17 A No.

18 Q In the last year has it been more or less
19 than when you first joined?

20 A Less.

21 Q What is the reason, if any, that the
22 board of directors is meeting less now?

23 A There's less need to meet.

24 Q Why is there less need to meet?

1 Q Was drew Robins at that meeting?

2 A I don't recall.

3 Q Do you recall if Richard Stevens was at
4 that meeting?

5 A No, Richard was not at that meeting.

6 Q Was anyone on Mr. Stevens' behalf at that
7 meeting?

8 A Akers.

9 Q Ken Akers. I'm sorry.

10 A Again, we need to be clear. That's a
11 product marketing committee meeting. So Ken
12 was a member of it. He was there on Richard's
13 behalf. Another fellow by the name of
14 Bob Quinn was also at that meeting. He was on
15 the product marketing committee.

16 Q Now, with respect to these product
17 marketing committees, do you have to be a
18 licensee or an employee of a licensee to attend
19 or to participate in these meetings?

20 A To be a member.


21 Q Who pays for the cost and expenses of the
22 participation for these meetings?

23 A Restonic does. And we reimburse the
24 travel expenses.

1 Q Whose decision is it whether or not a
2 licensee's employees will sit on one of these
3 committees? Ultimately, you as president may
4 ask a licensee if, you know, one of his or her
5 employees could sit on the meeting, but it's
6 the licensee's ultimate decision to decide
7 whether or not he's going to allow the employee
8 to participate, correct?

9 A Of course.

10 Q That individual who participates on
11 behalf of the licensee and those product
12 marketing committees are helping not only
13 Restonic, but they're helping their licensee
14 employees, correct?

15 A The purpose is to help Restonic. 

16 Q Which, in turn, helps the licensees?

17 A The whole group of licensees.

18 Q Now, in addition to these various
19 meetings we've spoke about -- again, I'm not
20 going to go through the litany of what they
21 are -- have there been any other meetings that
22 you're aware of that have been held in Illinois
23 in which one or more licensees have
24 participated either directly or through one of

1 A Yes.

2 Q Now, sir, does any of the Restonic
3 licensees purchase anything directly from
4 Restonic Corporation or Restonic Mattress
5 Corporation?

6 A Yes.

7 Q What is the nature of the products that
8 are purchased or services that are purchased?

9 A Well, the services are the marketing
10 services of brand management, which they pay a
11 licensing fee for. The products are actually
12 marketing materials that Restonic develops.

13 Q Those are purchased by the licensees from
14 Restonic here in Illinois?

15 A Yes.

16 Q In addition to marketing materials, do
17 the licensees purchase anything else directly
18 from Restonic?

19 A Not that I'm aware of.

20 Q How about whether or not Restonic
21 purchased anything from licensees?

22 A The only thing that we may purchase from
23 a licensee that we can think of would be some
24 material we would need for our showroom in

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1 MR. SALKOWSKI: Sir, I have no further
2 questions. For the purposes of the record, the
3 deposition was limited to issues surrounding
4 jurisdiction. And that I reserve the right to
5 call you on the substantive matters if need be.

6 MR. MENDELSON: Anybody else?

7 MR. LYMAN: I have a question.

8 EXAMINATION

9 BY MR. LYMAN:

10 Q Do you know that Sleep Alliance meeting
11 that I think you facilitated?

12 A Yes.

13 Q Was that in conjunction with some other
14 meetings that were taking place at the same
15 time like other Restonic meetings, if you know?

16 A Well, that I recall now as we went
17 through this process, it was the afternoon of
18 and the morning after that this product
19 marketing committee meeting we were having here
20 in Chicago.

21 Q So, in other words, there were Restonic
22 meetings that proceeded first?

23 A Correct.

24 Q I think you already told us that the]

1 reason all these people met for the Sleep
2 Alliance is because it was a convenient
3 location being in Chicago, correct?

4 A Correct.

5 Q So now it's even more convenient because
6 everybody was already there because of
7 Restonic -- a Restonic meeting that had taken
8 place before the Sleep Alliance meeting,
9 correct?

10 A Not everybody. But most of them,
11 correct.

12 MR. LYMAN: That's all I have.

13 EXAMINATION

14 BY MR. GAUSTAD:

15 Q Mr. Russo, you had mentioned Ken Akers on
16 a number of occasions. As I understand, it's
17 your understanding or you believe Mr. Akers is
18 an employee of the Stevens group, is that
19 right? Do you know?

20 A I believe he works for Stevens Mattress
21 Company. One of the two, if not both.

22 Q So when he was in attendance at these
23 meetings, was he there on behalf of the entity
24 or Mr. Stevens in an individual capacity?

1 I further certify that I am not
2 counsel for nor in any way related to any of
3 the parties to this suit, nor am I in any way
4 interested in the outcome thereof.

5 I further certify that this
6 certificate applies to the original signed IN
7 BLUE and certified transcripts only. I
8 assume no responsibility for the accuracy of
9 any reproduced copies not made under my
10 control or direction.

11 IN TESTIMONY WHEREOF I have
12 hereunto set my hand and affixed my notorial
13 seal this 27th day of July, A.D., 2008.

14
15
16 
17 Laura Locascio, CSR, RPR

18 My Commission Expires
19 October 16, 2011
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